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LOTTERY BONDS IN FRANCE AND IN THE  
PRINCIPAL COUNTRIES OF EUROPE.<sup>1</sup>

- I. Definition : Questions of Law raised by Lottery Bonds.
- II. Concerning the Issue of Lottery Bonds.
- III. Concerning the Negotiation of Lottery Bonds.
- IV. Concerning the Payment of Lottery Bonds.
- V. International Law.
- VI. Economic and Legislative Survey.

THE negotiable instrument which current expression and financial usage designate by the special name of "bond" has spread through all the civilized countries of the world. It is primarily a deed of loan which is destined to circulate in the public market, in the exchange and bank; in a word, it is a public evidence which represents a credit. Nevertheless, if the original type of bond, which, from a legal standpoint, is a simple deed of loan identical in nature with a note issued by a private individual, is thus found universally circulated, it is by no means the same with all kinds of bonds which are capable of being bought or sold in any of the public exchanges. In fact, there exists in a certain number of countries a class of bonds called lottery bonds,<sup>2</sup> which by reason of their peculiar form, and of the peculiar rights which they confer on the holder, could not be freely issued or universally circulated. It is this category of bond which especially forms the subject of the present investigation.

Lottery bonds have nothing at first sight to distinguish them from the ordinary bond. Like the latter, they can be made out payable to order or to bearer; like the latter, also, they are usually provided with coupons representing interest to be paid; and, like the latter, they as well bear the number of issue. But it is precisely the different use of these numbers which marks the difference between the two classes of obligations. In the ordinary bond the number of issue serves solely to facilitate the redemption of the

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<sup>1</sup> For the translation of this article from the French, the Editors are under obligation to Mr. Philip Ogden, of Johns Hopkins University.

<sup>2</sup> In France, Obligations à lots, Valeurs à lots; in Germany, Prämienobligationen, Prämienpapiere, etc.

amount loaned. It must not here be forgotten that European loans which are effected by means of issuing bonds are redeemable gradually; that is to say, that every year a certain number of bonds chosen by lot are called in for payment. In the lottery bond, however, the number of issue printed on the instrument presents a very different character. It is not merely a number of issue which permits the arrangement of a gradual liquidation, but it is primarily the number of a lottery ticket. The essential characteristic of the lottery bond is that the number which it bears shares till its liquidation in periodical drawings of more or less important prizes, together with the other bonds of the same issue which have not been paid. These prizes consist of sums of money, which are sometimes of considerable value (200,000 and 500,000 fr.). In practice, the drawings for payment are made to coincide with drawings for prizes, and it is so arranged that the holders of the bonds whose numbers appear first at the drawings for payment shall be the beneficiaries of the prizes.<sup>1</sup>

It is then evident that the lottery bond presents a double character. It is at once (1) *a deed of loan*, and (2) *a lottery ticket*. As *deed of loan*, it confers upon the holder the right to the payment of interest and reimbursement of the capital lent; as *lottery ticket*, it takes part periodically in drawings of more or less important prizes. The lottery bond may then be defined as *that bond to which is attached the contingent right to a prize*, or, if preferred, *the vested right to chances at lottery*.

Such is the double aspect which the lottery bond presents. At present it may be found in most of the financial markets of Europe, and of all nationalities, German, Austrian, Spanish, Greek, Italian, Russian, Swedish, and Swiss. Especially is this true in France. The many lottery loans placed by the city of Paris, the lottery bonds of the Crédit Foncier, the Companies of Suez and Panama, are too well known to dwell upon. So it will suffice to cite the names here as examples. We must also here ask pardon for not tracing in detail the historical origin of these bonds, which appeared in their existing form at the close of the lottery loans of the eighteenth century. This would doubtless furnish a most interesting financial and historical investigation, but it is not the feature to which we would call attention in the present sketch,

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<sup>1</sup> Most of the time, also, the total of the payment is deducted for the winning bonds from the total of the prize won, so that the prize seems only a kind of payment with premium.

which is purely and exclusively legal. Our sole purpose is to give here a rapid glance at the many legal problems of a particularly delicate solution, which are occasioned by the issue, the negotiation, and the payment of lottery bonds.

Let there, then, be no misapprehension of the questions under consideration. When we speak of issue, of negotiation, of payment, we do not have in view the processes by which the lottery bond is issued, negotiated, and paid; for the instruments of which we are about to treat, these processes are not materially different from the methods in use in issuing, negotiating, and paying ordinary bonds. Our chief interest lies in the legal difficulties which are encountered in issuing, negotiating, or paying these securities, — difficulties which are not met with in ordinary bonds, and which arise solely from the concurrent lottery privileges attached by the borrower at the first issue. A lottery bond, as we have said, is the combination of a deed of loan and of a lottery ticket. We will now investigate the influence which this combination has upon the legality of the issue, of the negotiation, and of the payment of such instruments.

## II.

In all civilized countries the lottery is forbidden by penal law. Experience, old as the world, has taught that the kind of gambling in which the gambler may at once attain wealth by the payment of a small deposit excites in the highest degree the passion and cupidity of mankind. Strong, indeed, are they who resist the fascination of fortune's wheel. Many governments have turned this means of temptation to their profit, and many states at this very hour number the lottery among their most important fiscal resources. In Germany, Austria, Spain, Italy, and Denmark the state lottery appears as a powerful and reliable means of revenue. In France the state lottery existed until 1832, when this institution was abolished by law, a measure dictated to the French legislator by a sentiment of high moral feeling. In many countries of Europe state lotteries have been abolished (England, Sweden, etc.). Private lottery is forbidden in all the countries which we have enumerated above. The establishment of a lottery is a misdemeanor *per se*, and falls under the jurisdiction of the penal law. This prohibition is based on two very different motives. In the countries where the state lottery still exists for the purposes of revenue, and furnishes the public treasury its surest resources, the

prohibition of private lotteries appears as a measure intended to protect a state monopoly. In those, on the other hand, where the state lottery has disappeared or has never existed, the interdiction of lotteries is based on high moral feeling. Such, then, is the double character which the unanimous suppression of lotteries in Europe presents.

Lotteries are forbidden. Do lottery bonds fall within the range of this prohibition?

The practical interest of the question is great. If the decision be that the issue of lottery bonds is an act contrary to the laws which forbid lotteries, then the logical consequence is that this act should not lawfully be attempted except by virtue of a special law. Otherwise, those who avail themselves of an issue of bonds of this nature would be liable to the penalties exacted by these laws, and the holders would have no right to demand the promised prizes.

In France the question is considered in the text of the law of the 21st of May, 1836; the first two articles read as follows:—

“Art. 1. Lotteries of all kinds are forbidden.

“Art. 2. The following are considered lotteries, and as such forbidden: the sale of landed property, of personal property, or of merchandise, effected by the means of lot, or of any property to which may have been attached either premiums or other benefits due to lot, and, in general, *all transactions offered to the public to arouse the hope of gain procured by lot.*”

It was the last words of Article 2 which gave rise to a vehement controversy in regard to the issue of lottery bonds. This controversy started in 1868. At this time the Imperial government presented the Legislative Body with a bill which had been already considered in the Council of State. The object was to authorize the Maritime Company of the Suez Canal to issue bonds payable with prizes drawn by lot. This was the first time that the legislative power had been directly required to give a decision on such a question. Among the many lottery-bonds which were negotiated at this time in the market of transferable securities, none had been issued in this manner. A parliamentary incident in 1865, moreover, had impelled the Imperial government to take a position on this point, and the Minister of State, M. Rouher, had then declared that the law concerning lotteries was not to affect lottery bonds.<sup>1</sup> At

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<sup>1</sup> Discussion of the Legislative Body, Session of 9th June, 1865,—On the issue in France of the Mexican loan effected through lottery bonds.

the Session of the Legislative Body of the 16th June, 1868, the opposition, represented by the Lanjuinais deputies, Marie and Jules Favre, vigorously resisted the bill which was to authorize the Company of Suez to issue lottery bonds. By the overwhelming majority of 183 votes to 8, the Legislative Body adopted the measure. But one cannot draw any exact legal significance from this vote, for, by reason of the subtlety of the debaters of the government, it was impossible to decide whether the Legislative Body, in granting its sanction, with this authoritative interpretation of the law of 1836, had decided that the law was not applicable to lottery loans, or if, adopting the contrary position, it granted its sanction because the undertaking under consideration deserved to have the prohibition of this rigorous law removed.

To-day, however, in France the controversy has subsided. It is unanimously admitted that the issue of lottery bonds is a transaction falling under the jurisdiction of the law of 1836. This position, affirmed by a celebrated decision of the Cour de Cassation, in 1876,<sup>1</sup> by the government in 1877,<sup>2</sup> and by most writers, was definitively established by the French Parliament in a striking manner in 1888. This decision, in short, authorized the Company of the Interoceanic Canal of Panama to issue lottery bonds by express infringement of the law of 1836.<sup>3</sup> It is therefore admitted in France that *no issue of lottery bonds can take place without special sanction by the legislative power.*

This position is justified by the text of the law; there can be no doubt that the issue of lottery bonds is one of those transactions offered to the public to arouse the hope of gain acquired by lot. The contrary could not be seriously maintained, and in fact has never been used as argument.

If from France we pass to the other countries of Europe, we see that the same conditions prevail everywhere, with one exception. In all countries except *Spain* the issue of lottery bonds is assumed to fall under the prohibition of lotteries. In *Germany* the state lottery has been in existence in most of the states, notably in

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<sup>1</sup> Cour de Cassation, Criminal Chamber, 14th January, 1876.

<sup>2</sup> Decision of the Minister of Justice, dated 8th June, 1877, forbidding the advertisement of foreign lottery loans and the publication of the lists of drawings.

<sup>3</sup> Article 4 of the law of the 8th July, 1888, ordains that all prospectuses, publications, bonds, etc., published by the Company of Panama bear the notice, "Loan authorized in accordance with the law of the 21st May, 1836, by the law of the 8th June, 1888."

Prussia, since the time of Frederick II. The issue of lottery bonds, which was very frequent about 1860, was disapproved by the economists at the Congress of Hanover in 1864, and a restrictive law was the result of this condemnation. The law of the Empire of the 8th of June, 1871, forbade the issue of lottery bonds payable to bearer throughout the Empire, except Imperial loans, or loans of one of the confederate states authorized by a law of the Empire. In *England*, by the act of 10 & 11 Will. III. c. 17, all lotteries were declared a public nuisance, and suppressed. This prohibition was renewed by frequent statutes.<sup>1</sup> Lottery bonds fall under this restriction, and an issue of these obligations has never been authorized by Parliament. In *Austria* the issue of lottery bonds, which was formerly possible by a simple official sanction, is restrained to-day by the law of the 9th of March, 1889. This law provides that the state alone shall issue lottery bonds, and then only by means of a special law, when it is required to promote public interests. A *Hungarian* law of the 21st of April, 1889, lays down the same restriction in Hungary. In *Belgium* the law of the 31st of December, 1851, drafted in almost the same terms as the French law of 1836, forbids lotteries. Lottery bonds fell under this prohibition. Corporations, however, whose existence was contingent on the authorization of government, still preserved the right to issue them. When government control of corporations ceased, the necessity of controlling the issue of lottery bonds arose, and the practice was forbidden by Article 68 of the law of the 18th of May, 1873. In *Greece* a law of the 4-16 of January, 1888, on lotteries, forbids the issue of lottery bonds, unless they shall be specially authorized by the government. In *Italy* the royal decree of the 21st of November, 1880, on lotteries, giving a decision under the law of the 19th of July, 1880, forbids, in its Article 3, "*every transaction in which gain, or the drawing of a prize in money, depends upon the drawing of a lot.*" The issue of lottery bonds falls within this prohibition. Finally, in *Sweden* and *Russia* a similar prohibition may be found, and official sanction is required preceding each issue of lottery bonds.

### III.

We have just seen under what restrictions the right to issue lottery bonds is placed in most countries of Europe; we have also

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<sup>1</sup> 12 Geo. II. c. 28; 13 Geo. II. c. 19; 18 Geo. II. c. 34; 42 Geo. II. c. 119; and finally 4 Geo. IV. c. 60.

observed under what conditions an issue of bonds of this kind is in accordance with existing legislation; we have carefully remarked what issues are legal and valid, and what, on the contrary, fall under the jurisdiction of the penal law, and are invalid by the civil law. It now remains for us to pronounce on the character of sales of lottery bonds which have been duly authorized.<sup>1</sup> The transfer of these bonds has raised, and still raises, much controversy. It has furnished the courts with a multitude of cases, all very delicate to analyze, and therefore the question presents an extreme interest which demands special attention.

The conditions may be formulated as follows. Lottery bonds are undoubtedly in trade, and consequently can be sold in the same manner as bonds to which no lot is attached. But by reason of these lottery chances the sellers often have recourse to different schemes with the intention of interesting a large number of people and attracting buyers. Lottery bonds are popular with the public, which is greedy for all transactions of chance; the greater the chance, the greater the number of speculators. Nothing is simpler for the proprietor of lottery bonds than to modify those which he owns in such a way that the lottery chances can be offered to the public under the most advantageous conditions. A fruitful business must follow attractive offers. Now, are all these contrivances to be considered lawful?

In *France* the answer is, No. The trade in lottery bonds is not unrestricted. The sale of such obligations is not a contract in which the terms are definitely fixed by the parties. It is essentially controlled by the restriction of the law of 1836. Lottery bonds, says French legal theory, may not be the object of free transfer as other public funds; for the issue of such bonds, constituting on the whole a "forbidden lottery" in the acceptance of the law of 1836, was authorized by a special law by way of exception. Now, when a special law infringes in this way that of 1836, it only does so in a certain degree and under certain conditions. It purposes to render a sound loan successful by adding the charm of a contingent gain. It thus gives a certain moral sanction to a human failing which deserves little encouragement, the hope of gain without work. The Legislative Body has permitted the future lender, under certain conditions only, to attach lottery chances to

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<sup>1</sup> It is needless to say that there could be no question in a sale of lottery bonds which have not been authorized. A lottery bond of which the issue has not been authorized is *res extra commercium*, and cannot become the object of a valid sale.



the deeds of loan which he is preparing to put in circulation. These conditions are made the subject of express clauses in the law of authorization. The authorization has only been granted to bonds which conform to certain regulations. It has established a certain proportion between the face of the bond, the yearly interest, and the total of the prizes, arranging in this way beforehand the amount of chance which may be offered to the public.<sup>1</sup> The seller of a lottery bond, then, like the original circulator, must refrain from infringing the essential conditions of the authorization; he must respect the form of the bond as regularly issued. Any one who offers to the public business ventures in authorized lottery bonds organizes a lottery in the sense of Article 2 of the law of 1836, if he modifies the conditions under which the issue was permitted: "To establish a lottery means not only to create a new lottery, but also to offer the possibility of taking part in a pre-existing lottery, after having modified the conditions."<sup>2</sup> Such is the principle established in France by an unbroken line of decision, formulated for the first time by the Cour de Cassation in three decisions of 1866;<sup>3</sup> and repeated in 1882;<sup>4</sup> a principle which receives the approval of the most recent writers on the subject. By virtue of this principle, it is unanimously admitted that every transaction in which these are offered to the public must have regard to the following essentials: 1st. The unity of the bond.<sup>5</sup> 2d. The nominal value of the bond and its rate of payment. 3d. The yearly income attached to the bond. 4th. The chances by lottery. 5th. The number of drawings. Any modification of the conditions just stated exposes the seller to the penalties of the law of 1836.

In the light of this principle, French writers, and in many points the courts, both civil and criminal, have been forced to examine

<sup>1</sup> The offer to the public is the essential element of the misdemeanor foreseen and published by the law of 1836. Hence we do not treat here of sales between private individuals. When the sale has not been preceded by an offer to the public, the principle of the liberty of contract covers all the clauses of the agreement, whatever be the result.

<sup>2</sup> Report of Counsellor M. Nouquier before the Criminal Chamber of the Cour de Cassation. Couttet Case, 10th February, 1866.

<sup>3</sup> Cour de Cassation, Criminal Chamber, 10th February, 24th March, and 4th May, 1866.

<sup>4</sup> *Idem*, 8th July, 1882, and many later decisions.

<sup>5</sup> By this is meant the concentration in one and the same instrument of the right to the capital, to the interest, and to the chances of lottery.

the legality of a number of transactions connected with the sale of lottery bonds, which we sum up under our four heads as follows: 1st. Sale of divided bonds. 2d. Sale of lottery bonds by instalments. 3d. Sales of lottery bonds on approval (*à option*). 4th. Sales before the prizes are drawn, with permission to the purchaser to resell the instrument after the drawing if desired.

(1) *Sale of divided bonds*. — About 1865 certain bankers conceived the plan of dividing lottery bonds and of selling separately the parts thus obtained. The division was arranged in two different ways. The first arrangement separated the chances by lottery from the right to the interest and payment of the principal, and then divided these chances in halves, fifths, tenths, twentieths, even fortieths, and fixed the price of the chances thus prepared at pleasure. The second divided the deeds into parts of a total value inferior to the sum of the parts provided for by the law of authorization, and sold these parts, each insuring a fraction of the interest, of the payment, and of the chances by lottery. Both methods were condemned under the law of 1836 by the courts appealed to by the public prosecutor.<sup>1</sup> This was in fact "forbidden lottery," as stated by the law of 1836, since the public were invited to take part in a lottery differing from the one authorized, inasmuch as the bonds on sale differed from those stamped by the public authorities. The sentence pronounced by the courts cut short this manner of speculation in France.

(2) *Sale of lottery bonds by instalments*. — The sale by instalments is one kind of a sale on credit, and has nothing in it peculiar to the lottery bond. It is a sale where there is a stipulation that the price is to be paid in successive deposits, usually monthly, within a certain period of time. The sale by instalments is usually employed for certain objects of personal property of use or comfort, at times for articles indispensable to some classes of persons. The price to be paid is relatively high, and if paid at one time would require a great expenditure, much beyond the means of the working classes, — pianos, bicycles, sewing machines, etc.

It was about 1880 that bankers began to apply the system of sale by instalments to the transfer of lottery bonds. The experiment was crowned with immediate success. At first the legality of the process was questioned with regard to the law of 1836. The division of the price, it was said, constituted a violation of the

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<sup>1</sup> Decisions cited in notes 3 and 4 of page 393, *supra*.

essential conditions of the authorization, since it allowed a small capitalist, by spending an insignificant sum, to take part in the drawings by lot, a privilege for which the Legislative Body had imposed the necessity of a serious outlay. But this opinion is now abandoned, and it is absolutely established by the courts and by text-writers, that the sale of lottery bonds by instalments is not forbidden by law. The division made infringes no essential condition. It in no way tampers with the *value* of the bond. The *price* alone is divided, and contracting parties are always at liberty to arrange the manner of payment.

The sale of lottery bonds by instalments is never lawful unless genuine and straightforward. If this manner of sale is valid under the penal law, it is simply because it does not, *a priori*, infringe the essential conditions of the law of authorization. It is usually vitiated, however, by the insertion of certain accessory clauses which have the effect of changing the legality of the transaction. The limits of this present essay do not permit us to give a sketch of these different clauses, which have occasioned heated polemics in theoretical discussions and provoked innumerable judicial decisions. It must now suffice to say that such abuses have arisen in the course of sales of lottery bonds by instalments, that the French Parliament is considering a statement of law upon the subject, which is to appear soon, and will cover sales of this kind with a strict legal regulation, — too strict to suit many.

(3) *Sales of lottery bonds on approval (à option)*. — The sale of lottery bonds on approval is a special kind of transfer which appeared in France about 1883, and which is frequently employed there, especially at Paris and Marseilles. By virtue of this sale, effected a few days before a drawing of lots takes place, the purchaser can *at his pleasure* in the five or ten days which follow the drawing either keep the bond by paying the price agreed upon, or renounce his purchase. At the same time he abandons to the seller as forfeit the small sum originally paid on the face price of the bond when the bargain was arranged. The option thus left to the buyer has given the name to the contract. Certain writers have asserted that this is a transaction falling under the prohibition of the law of 1836. This contract, they say, simply disguises the sale of the lottery chance alone, separated from the interest and repayment of the capital. We however entertain the contrary opinion. It is merely a fair and open sale of the integral title without impairment. The purchaser becomes the owner of

the instrument in the correct form under which the issue has been authorized. The sale, it is true, is affected by a subsequent condition, but it is nowhere specified that the lottery bond should not contain a clause of this nature.

(4) *Sales before the prizes are drawn, with permission for the purchaser to resell after the drawing, if desired.*—Most financial establishments, large and small, have engaged in the sale of lottery bonds under a peculiar kind of arrangement, which up to the present date has not been made the subject of judicial action or of theoretical discussion. A fortnight before each drawing these establishments offer lottery bonds for sale, agreeing to retake them from the purchaser in the five days which follow the drawing, by paying a slight reduction (usually two or five francs) on the price of the original sale. For example, in this way a bond of Panama, sold for 122 francs before the drawing of the 15th of February, 1895, could be resold by the purchaser to the seller till the 20th of February, inclusive, for 120 francs. We regard the transaction as lawful, and not punishable, although after the sale and resale of the bond the buyer is in the same position as a person who would have bought the lottery ticket for two francs, with no bond attached. The fact remains, nevertheless, that the bond which has been the subject of these different transactions is the same integral instrument which the legislative body authorized. This circumstance in itself, as we think, insures its legality.

In the other countries of Europe, as well as in France, speculation has seized on the lottery bond. It is found usually under the two following forms, as we have already noted: 1st. Dismemberment of the bond. 2d. Sale of lottery bonds by instalments.

(1) *Dismemberment of the bond.*—In *Italy*, as in *France*, it is not allowed to offer to the public unauthorized parts of bonds, or the simple chance at lottery, separated from the bond itself (Law of the 19th of July, and decree of the 21st November, 1880), and the same prohibition is found in *Sweden*. On the other hand, in *Germany*, in *Austria*, in *Hungary*, in the *Netherlands*, and in *Turkey*, the sale of parts of lottery bonds is permitted, and the sale of all or a part of the chances at lottery which are attached to the instrument is the source of a profitable business. The latter arrangement is particularly common in the German speaking countries, where it is technically called *Heuergeschäft* or *Promessengeschäft*.

(2) *Sale of lottery bonds by instalments.*—The sale of lottery

bonds by instalments is especially practised at the present time in *Belgium*, in *Austro-Hungary*, and in *Switzerland*. In *Austria*, the kinds of sale have been strictly regulated by the law of the 30th of June, 1878, and in *Hungary* by the law of the 5th of June, 1883. In *Germany* the sale of lottery bonds by instalments (*Abzahlungs-geschäft*) has been forbidden throughout the Empire by the Imperial law of the 16th of May, 1894.

#### IV.

Various and peculiar questions arise in connection with the payment of lottery bonds, and, in order to understand them, it is convenient to distinguish the two following: 1st. The payment normally effected. 2d. The payment effected before due.

(1) *Case of normal payment*. — Lottery bonds, in general, are paid gradually. The progressive liquidation is assured by periodic drawings by lot. Certain difficulties, however, occur in the practice, and we will consider some of these briefly: —

*a.* It has happened by some mistake, or for some reason other than fraud, that two or more owners of the same number have come to claim the benefit of the same lot. The party issuing the loan was forced to pay the entire amount of the lot to each of the bearers of the successful number.<sup>1</sup>

*b.* It can also happen that the number of a bond be omitted at the time of a drawing, and that the holder proves that the number of his bond has not shared in the drawing. How is it possible to set a value in money on the loss occasioned by this omission! The holder has perhaps been deprived of a prize. At all events he has lost the chance to win one. By what rules is this chance to be valued? Different ways have been proposed, and the imagination of magistrates and jurists has been exercised on this question without restraint. Though the remedy appear perhaps empirical, we suggest the following solutions. Repeat the drawings in which the number in question was omitted, or give several chances in the following drawings for the benefit of the bondholder who was the sufferer before, by inserting in the wheel several lots containing the number of the omitted bond, etc.

(2) *Case of anticipated payment*. — The payment of the bonds usually takes place at the times determined beforehand in the specifications of the loan, in such a way that all the bonds shall be

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<sup>1</sup> Cour d'Appel de Paris, 28th of May, 1853.

repaid within the limit fixed for the total payment. But the repayment does not always operate here in a normal manner. For different reasons the time may be advanced. For instance, the borrower may fail, or possibly desire to convert his loan. Let us then examine these two cases of anticipated repayment, and consider rapidly what is the right of the holder of the lottery bond in each of these hypotheses.

*a. Failure.*—Some writers in France assert that it is essential in such cases to know the beneficiaries of the lots. Consequently, it is required to proceed immediately to all of the drawings. The winners will appear in the failure for the sums that the lot would have given them, and will obtain at least a dividend on the lots due them. This solution has been justly criticised. After the failure no such proceeding should be possible as the assignment of prizes by lot. The failure arrests everything. It fixes the situation of the creditors *in statu quo*. The failure, it might be said, acts as a veritable *crystallization*. No case of inequality should arise among the creditors after the declaration of the failure.<sup>1</sup>

The future drawings could not then be arranged on the day of the failure. It would appear that in all such cases the bondholders would have the right to claim damages. By his fault the borrower fails in an obligation to be performed, which he had assumed, — his obligation to arrange drawings by lot. This obligation unexecuted sounds in damages according to common law.<sup>2</sup> On the arrangement of these damages fresh difficulties arise, which, however, we may not consider here.

*b. Conversion.*—This is a very grave question, and in France has just given rise to a notorious lawsuit still pending before the Court of Appeal.<sup>3</sup> Is it permissible for the borrower who has issued bonds to assume the right to impose on his bondholders anticipated payment in order to liquidate his debt? Most of the courts and text-writers answer in the negative. Others think that the borrower enjoys this privilege. If this solution holds, however, it must be admitted that the existence of lottery chances attached to the bonds places the borrower in a singular embarrassment. In short, certain bonds, to be determined by lot extending through a number of years, should obtain a prize. Now it is self-evident

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<sup>1</sup> Art. 445, Code de Commerce Français.

<sup>2</sup> Art. 1142 du Code Civil Français.

<sup>3</sup> *Compagnie d'Assurances generales v. Compagnie des Chemins de Fer de l'Est*, Civil Court of the Seine, 1st Chamber, 18th of July, 1895.

that without a clause to the contrary the anticipated payment should not deprive the bondholders of the chances of lottery prizes. How are these rights to be respected?

An interesting discussion arose on this point in the Municipal Council of Paris. The controversy opened in 1880 and is still pending to-day. The enormous debt which the city of Paris carries consists of lottery bonds to which is attached a profitable interest. The city wishes to pay up its debt, but does not know how to indemnify the bondholders that are to be paid for the lottery chances of which they would be deprived. To effect this several plans have been suggested. It has been proposed to pay the bondholder for his deed, but leave him his number, which would continue to take part in the promised drawings; but this would infringe the law of 1836. As has been stated, the nature of the authorized bonds must not be changed.<sup>1</sup> It has also been proposed to make all the drawings at once, but not to touch the prizes accruing to the holders favored by lot, except at the times when they would have been paid regularly, without the anticipated payment. It was then arranged that special acknowledgments should be given to the bondholders for the prizes which fell to them in order that they might have them discounted.

But all the solutions advanced are open to objections, so that even the partisan of the conversion of loans realized by the issue of bonds must, we think, become the adversary of the conversion of lottery bonds.

Most of the questions which we have passed in review are present in many countries of Europe, as in France, where they have given rise to different arrangements. We recall only the celebrated conversions of the lottery bonds of Brussels and Anvers. The conversion of the city of Brussels was specially authorized by a royal decree dated the 24th of October, 1886. The bondholders were paid the nominal amount of their bonds; the drawings by lot were made at once, and special acknowledgments were given to the winners for the prizes accruing to them, with the opportunity of having them discounted at a rate of three per cent. *Italy* also offers us the example of numerous conversions of lottery loans. At the time of the conversion of the lottery bonds of the city of Naples, all the bondholders were presented with a ticket bearing the number of their former bond, and giving the right to be represented at the normal time in the drawings of the promised prizes.

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<sup>1</sup> *Supra*, III.

## V.

We have studied now the rules of law applicable to lottery bonds in their respective countries. Bonds, however, are not alone public funds; they are besides, in a way, international commercial paper. Frequently, for example, a foreign company will open in quite another country than its own a public subscription with the intention of negotiating thereby an issue of bonds. Often, as well, bonds issued in one country circulate and are bought and sold in another country than the one in which they were authorized. In France, as in most of the countries of Europe, share lists or subscriptions relative to bonds issued by foreign loans are entirely free. It is the same with the negotiation of foreign bonds. These transactions are always more or less protected in the respective states, where the admission to the official quotation list is more or less strictly regulated. But if the principal countries of Europe are thus freely open on the whole to bonds of foreign origin, we may not say, however, that it is the same for the special bonds which we are considering,—lottery bonds,—for the issue and transfer of these are of a nature to interfere with certain rules of public order. It is then pertinent to examine here the following questions: 1st. On what conditions may lottery bonds be issued by a borrower outside of his own country? 2d. On what conditions may lottery bonds circulate in a country other than the one in which they were regularly issued, and become the subject of valid negotiation?

(1) *Issue of lottery bonds.*—We have called attention above<sup>1</sup> to the license permitted a borrower, in view of the different statutes forbidding lotteries, with regard to the issue of lottery bonds in the principal countries of Europe. There is a general tendency to recognize in the arrangements which forbid lotteries a character not only of public regulation, but also of international regulation. In consequence of this, foreign lotteries, and therefore the issue of foreign lottery bonds, are considered to be forbidden by the same laws. Moreover, most States have formulated special prohibitions in regard to foreign lotteries,<sup>2</sup> and these are universally applied to the issue of foreign lottery bonds.

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<sup>1</sup> *Supra*, II.

<sup>2</sup> *France*, law of 21st of May, 1836, Art. 4. *Germany*, Art. 286 of Penal Code, and Prussian law of 20th of July, 1885. *England*, 6 & 7 Will. IV. c. 66. *Denmark*, law of 6th of March, 1869. *United States*, sect. 2851, 3894, 3929, 4041, of the Revised Statutes. *Italy*, Decree of 5th of November, 1863. *Sweden*, law of 6th of August, 1881.



Such are the general principles which govern the matter in the absence of special provisions. But some States have regulated in express statute with great restrictions the issue of lottery bonds on their territory. In *Germany* the law of the 8th of June, 1871, forbids all issue of foreign lottery bonds throughout the Empire. The *Austrian* and *Hungarian* laws of 1889, before mentioned, which were visibly inspired by the German law, contain analogous prohibitions. In *Belgium* the law of the 30th of December, 1867, subordinates the legality of these issues to a previous sanction of the government.

(2) *Circulation*. — Foreign lottery bonds, of which the issue has been duly sanctioned in a country, circulate there, and are negotiated as bonds of the country, under the same conditions and under the same prohibitions. As to bonds from lottery loans of which the issue has not been specially authorized in a country where an authorization of this sort is indispensable, or else a prohibition of the lotteries may be assumed, the territory of the country is closed to them, and the existence of such instruments could not be revealed with impunity. The sale of these instruments is an offence against the law, and falls within the province of the penal code. The principle is almost universally admitted, and the contrary opinion has only been sustained by isolated decisions. In the United States, for example, a decision was given by the court of New York that the lotteries of Austria did not come under the articles which forbid lottery,<sup>1</sup> and an analogous decision is found in California; but the contrary has been decided by the Supreme Court of the United States.<sup>2</sup>

It is by virtue of this principle, and on the basis of the law of 1836, that decision has been rendered in France that it is forbidden to bring to the attention of the public by announcements, prospectuses, or any other means of publicity, the existence of unauthorized foreign lottery bonds. The publication of the winning numbers even is sufficient to expose the one who attempts it to the penalties of the law of 1836.<sup>3</sup> Belgian law on this last point is broader than the French, and shows that insertions in the papers indicating simply the result of passed drawings, without informing the public about the conditions for sharing in these

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<sup>1</sup> *Kohn v. Koehler*, 96 N. Y. Rep. 362.

<sup>2</sup> *Edward H. Horner v. The United States*, 147 U. S. Rep. 449.

<sup>3</sup> *Cour de Cassation de France*, 14th January, 1876.

drawings, and without giving information of the importance nor of the number of drawings yet to take place, do not fall under the prohibition of the law of 1851 which forbids lotteries.<sup>1</sup> Similar rules are observed, without indulgence of any kind, in the countries where, as in England, no exception to the prohibition of lotteries is made in favor of the lottery bond. It is by reason of this circumstance that in 1871 France waived the scheme considered for a moment of realizing a loan of two thousand millions in lottery bonds. England would not have been able to take part in a transaction of this kind, and this reflection was enough to dismiss the project.

Foreign lottery bonds, of which the issue has not been authorized in a country where an act of legislation is required, could not be admitted by a simple administrative measure to the official quotations of the exchanges of this country, since they could not become the object of a valid sale. This is only true for France and Belgium since 1881. Before that time the treaty of commerce concluded between France and Belgium on the 1st of May, 1861, in Article 36, stipulated for the admission to the official quotations of each of the contracting countries of certain lottery bonds issued in the other. It is interesting to note that, by reason of this proviso of the Franco-Belgian treaty, not only Belgian lottery bonds were authorized to appear in the official quotations of Paris, but also similar bonds found in exchange quotations in all the countries with which France had concluded a treaty of commerce which contained the clause "*la nation la plus favorisée.*" The arrangement of Article 36 of the treaty of 1861 not having been reproduced in the Franco-Belgian convention of the 31st of October, 1881, French and Belgian lottery bonds have been reciprocally forced to disappear from the official quotations of the other country, and the *régime* of protection established in 1861 has come to an end.

## VI.

We have limited ourselves in the course of this study to the investigation of the principles of law raised by lottery bonds, but the present work would be far from complete if we were not to remark upon the grave economic problem raised by the existence of such obligations.

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<sup>1</sup> Cour de Cassation de Belgique, 18th July, 1887.

The most elementary principles of political economy formally condemn lotteries. Are lottery bonds, then, to be condemned on the same footing with lotteries? Such is the question. The system of lottery bonds has its obstinate partisans. It counts also unyielding adversaries, and it is among the latter that we take our place.

The partisans of lottery bonds, at the head of whom in France are the celebrated economist, Michel Chevalier, and M. Paul Leroy-Beaulieu,<sup>1</sup> have several times pleaded the cause of lottery bonds. They claim that there is a great difference between lotteries and lottery loans. 1. In the lottery there are a few winning tickets only, while most of the holders of tickets lose their investment entirely. In lottery loans, however, those who do not gain a prize may always rely on the return of their investment. 2. The lottery ticket brings no interest. The lottery bond is a deed of investment, to which a reasonable interest is attached. 3. The fascination of the lottery chances which are attached to the bonds permits the borrower to obtain a diminution in the demands of the investors for the rate of annual interest. The lottery bond, they continue, far from being detrimental, is sovereignly useful to society, for it renders saving attractive. Far from destroying the practice, which lotteries do, the lottery loan stimulates it. Many small fortunes have for an origin the charm exercised by a prize. When a man has once conceived a liking for transferable securities in this form, he quickly becomes used to all. He has taken a first step in the way of saving, and soon makes other investments. The lottery bond is no more reprehensible, no more immoral, than a hundred other ways of becoming rich which are considered lawful and legitimate. The lottery bond is for our city population what the bit of ground is for the peasant, — saving rendered attractive not only to the reason, but also to the imagination.<sup>2</sup>

Economists do not always advocate lottery bonds without reservation in their approval of the system. They blame it specially for paying a low interest, sensibly inferior to that of other steady securities; for charming small capitals too easily, which could find equally sure investment with higher interest elsewhere for the same capital, and for favoring speculation. Hence they

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<sup>1</sup> Leroy-Beaulieu, *Traité de la Science des Finances*, 5th ed., Paris, 1891, Book II. pp. 341 *et seq.*

<sup>2</sup> *Ibid.*

are not in favor of absolute freedom in issuing lottery bonds, and recommend certain restrictions on this freedom from a legislative standpoint. M. Leroy-Beaulieu proposes to regulate the issue of lottery bonds in the following manner: 1. The lowest interest should never fall below  $2\frac{1}{2}\%$ . 2. The yearly instalment for the use of prizes should not exceed the tenth of the sum needed as yearly allowance for the use of the loan. 3. The length of the period of gradual payment should not exceed seventy-five years. 4. A single prize should not exceed 150,000 francs. 5. The number of yearly drawings should be four at the most.

The reasoning of the adversaries of lottery loans is very simple. All that is immoral is anti-economic. Now, the essential immorality of the lottery is found in the lottery loan. The phase of the lottery which is so strongly condemned is the possibility of gain without work, which dazzles the eyes of the poor and needy. For the same reason lottery bonds should be condemned.

The lottery, moreover, is so profoundly immoral, that it vitiates all that it touches. The ideal system of lottery bonds, a serious investment with reasonable interest, is already far exceeded. The example has been set by public authority; the lottery in a way is to be reborn into France when the lottery ticket is disguised under the flimsy name of lottery check (*bon-à-lots*). This is an intermediate bastard between the lottery bond and the lottery ticket. It is in principle a lottery bond, which bears no interest, of a price varying from 25 centimes to 100 francs, and it is to be paid up at the close of a certain period of time. There have been several issues of these for several years past. The combination of *bon-à-lots* is condemned by the best minds. The money invested by the purchaser of a *bon-à-lots* may be considered as lost to him for the time, since it bears no interest.

Lottery bonds, even though they bear an appreciable interest, may still be always condemned from another point of view. They give rise to speculations economically reprehensible, such as we have studied above,<sup>1</sup> and which no restrictive law can effectively repress; whatever exertions are made, as long as lottery bonds exist, whatever the price may be, speculation will always arise which by clever arrangement will manage to place within the reach of modest means the possibility of taking part in the lottery at a small figure.

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<sup>1</sup> *Supra*, III.

It is for these reasons that we join the eminent economists who agree in condemning in the name of morality, and of the healthy principles embodied in political economy, the system of lottery bonds. As early as August, 1864, the Congress of economists at Hanover embraced lotteries and lottery bonds in a sweeping censure, and the masters of financial science in Germany, the Rau, the Lorenz von Stein, have echoed this censure. "The search for fortune by another road than that of work is an unwholesome excitation," have written certain of our teachers.<sup>1</sup> Ourselves, we could demand nothing better wherewith to conclude this essay than to recall in closing the celebrated saying of Franklin, whom the adversaries of lottery bonds do not fail to quote in all their discourses and in all their writings:—

"If any man tell you that you can attain riches by any other means than by hard work and economy, suspect him; he is a poisoner."

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REMARKS.

(1) *Bibliography.* Those interested in the subject will find the matter more fully discussed in the *Traité des Obligations à Primes et à Lots*, by M. H. Lévy-Ullmann, Paris, 1895, and see also the bibliography at the end of this volume.

(2) In the preceding article no mention has been made of a certain category of bond called "Obligations à prime," or premium bonds, (bonds payable in one price, which is higher than the selling price,) which give rise to legal complications similar to those which we have just investigated, although the questions occur in somewhat different terms.

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<sup>1</sup> Cauwès, Cours d'Économie Politique, Paris, 3d ed., 1893, Book IV. No. 1311.